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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,871	09/05/2003	Andrea C. Hughes-Baird	0112300-1473	7309
29159	7590	05/07/2009		
K&L Gates LLP P.O. Box 1135 CHICAGO, IL 60690			EXAMINER HOEL, MATTHEW D	
			ART UNIT 3714	PAPER NUMBER
			NOTIFICATION DATE 05/07/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

### Office Action Summary

**Application No.**

10/655,871

**Applicant(s)**

HUGHS-BAIRD ET AL.

**Examiner**

Matthew D. Hoel

**Art Unit**

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14, 20-31 and 47-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-11, 20-28 and 47-50 is/are rejected.
- 7) ☒ Claim(s) 5-7, 12-14 and 29-31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1 to 4, 8 to 11, 20 to 23, 25 to 28, and 47 to 50 are rejected under 35

U.S.C. 103(a) as being obvious over "The Price is Right Dice Game" (8-22-2004

archived web page of <http://gscentral.net/dice.htm>, downloaded from

<http://web.archive.org/web/20040822075604/http://gscentral.net/dice.htm> on 8-19-2007,

hereafter referred to as Dice Game, entered as NPL 08-27-2007) in view of Baerlocher, et al. (U.S. patent 5,788,573 B1).

4. As to Claims 1, 8, 20, 25, 27, 28, and 47: Dice Game has all of the limitations of these claims, except for the game being implemented on a gaming device. Dice Game teaches a plurality of component symbols (top and bottom rows of digits, Pages 1 and 2); a plurality of prediction symbols (plural dice Pages 1 and 2). Dice game teaches a

game to (a) select one of said plurality of component symbols (first symbol selected, Page 2); (b) designate one of said plurality of prediction symbols (dice rolled, Page 2); (c) display said designated prediction symbol to a player (dice displayed, Page 2); (d) change a first modifier based on said displayed prediction symbol (thousands place revealed to player if dice matches digit for that price Page 2, the digit is a X1000 modifier since it is a thousands decimal place in the price of a car, in this case the 3 would have been revealed to the player in the thousands position if the car were in the \$3,000 to \$3,999 range, but it was not so in this case the player had to select higher or lower than three and correctly selected higher so a four was shown in the thousands place; in the example of Page 2 the prediction symbol or dice correctly predicted the component symbol or 6 in the tens place to the player did not have to select higher or lower); (e) change a second separate modifier if said prediction symbol matches said selected component symbol (process repeated and hundreds place revealed to player if dice matches digit for that price Page 2); (f) if said prediction symbol does not match said selected component symbol: (i) form at least two symbol sets based on said prediction symbol, wherein one of said symbols sets includes the selected component symbol (player must select from higher or lower as outlined above concerning Page 2 of the Price is Right Dice Game, in this case the player had to select higher or lower in the 1000s, 100s and 1s places because the 3, 4, and 5 of the dice did not match the 4, 1, and 8 digits, respectively); (ii) enable the player to input a prediction of which formed symbol set includes the selected component symbol; (iii) reveal the selected component symbol to the player; and (iv) change a third modifier if the player correctly picked which

symbol set includes the selected component symbol (player has to select last digit as higher or lower than five rolled on dice or prediction symbol in ones place of car price on Page 2, player correctly selected higher so 8 digit is revealed to player); (g) repeat steps (a) to (f) until each of said component symbols is revealed; and (h) provide the player an award based on said first modifier, said second modifier and said third modifier (game repeated until all digits are revealed and prize awarded to player in the event the player got all of the digits right, Pages 2 and 3). For each change of the first modifier, the first modifier is changed regardless of whether the prediction symbol matches the selected component symbol and regardless of whether the player correctly picked which symbol set includes the selected component symbol (each modifier or weighted decimal player, each weight being a multiplier, is revealed as the player correctly guesses the die roll or correctly guesses the correct high/low range if the player's die-roll guess is not correct, Page 2). In any event, each modifier is changed only once as the decimal places in Dice Game are revealed one at a time. All modifiers or decimals places are revealed in Dice game at the end of the game (Page 2, lower left corner: 1000s die is a four, the correct digit was 6 in the high range; 100s die is a 2, the correct digit was 6 in the high range; 10s die is a five, which was the correct digit, so no high or low ranges were offered; 1s die is a four, the correct digit was 3 in the low range; the player in this game guessed the correct ranges in the 1000s, 100s, and 1s places and rolled the right die value in the 10s place). Each of the symbol sets includes zero, one, or a plurality of symbols (Dice game had digits 0 to 9 or 1 to 6 at different times, Page 1). Dice game, however, lacks specificity as to a gaming device comprising: a display device; and a

processor operable with said display. '573, however, discloses at least one memory device (2:20-23,33-36, 6:26-31), at least one input device (3:34-40), at least one processor (3:26-29), at least one memory device which stores a plurality of instructions, which when executed by the processor, cause the processor to operate with the display device and the input device to execute the steps of a game (3:18-25, 6:26-31). It would have been obvious to one of ordinary skill at the time the invention was made to have applied the game of Dice Game to an electronic wagering gaming device such as '369.

MPEP 2144.04(III): "III. AUTOMATING A MANUAL ACTIVITY. In re Venner, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958) (Appellant argued that claims to a permanent mold casting apparatus for molding trunk pistons were allowable over the prior art because the claimed invention combined "old permanent-mold structures together with a timer and solenoid which automatically actuates the known pressure valve system to release the inner core after a predetermined time has elapsed." The court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art.)." '573 teaches a TV game show implemented as a bonus game on a wagering device ("Wheel of Fortune," 1:20-25; 1:30-48, Fig. 4) which would suggest taking a TV game show such as the Price is Right Dice Game and making it a bonus game on a wagering device. The advantage of this combination would be to take a game show familiar to players, most likely over thirty because of the running dates of the Price is Right game show, to attract players to play an otherwise typical slot machine. This modification of taking game shows such as "Price is Right" to an electronic wagering form would also serve to

comply with such regulations as Nevada 14.025, which requires all wagering game themes to appeal to persons older than 21; themes such as cartoons are prohibited, so as to not entice minors to gamble. Shows such as "Price is Right" and "Wheel of Fortune" tend to appeal to those in their thirties and above.

5. As to Claim 2: Dice Game on Page 2 shows the 6 in the tens place being revealed by the six on the dice (prediction symbol) matching the actual value of that digit.

6. As to Claim 3: The component symbols in Dice Game are from a range of numbers (higher or lower than the dice prediction symbol, Page 2).

7. As to Claim 4: The plurality of component symbols in Dice Game form a target symbol (plurality of digits forming the price of the car, Page 2).

8. As to Claim 9: Dice Game on Page 2 shows the 6 in the tens place being revealed by the six on the dice (prediction symbol) matching the actual value of that digit.

9. As to Claim 10: The component symbols in Dice Game are from a range of numbers (higher or lower than the dice prediction symbol, Page 2).

10. As to Claim 11: The plurality of component symbols in Dice Game form a target symbol (plurality of digits forming the price of the car, Page 2).

11. As to Claim 21: Dice Game on Page 2 shows the 6 in the tens place being revealed by the six on the dice (prediction symbol) matching the actual value of that digit.

12. As to Claim 22: The component symbols in Dice Game are from a range of numbers (higher or lower than the dice prediction symbol, Page 2).

13. As to Claim 23: The plurality of component symbols in Dice Game form a target symbol (plurality of digits forming the price of the car, Page 2).

14. As to Claim 26: Dice Game on Page 2 shows the 6 in the tens place being revealed by the six on the dice (prediction symbol) matching the actual value of that digit.

15. As to Claim 48: Dice Game on Page 2 shows the 6 in the tens place being revealed by the six on the dice (prediction symbol) matching the actual value of that digit.

16. As to Claims 49 and 50: '573 teaches providing a game through a network which can be the Internet (3:17-25).

17. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dice Game and '369 in view of Scame.

18. As to Claim 24: '573 and Dice Game lack in initially displaying one of the components numbers, but this would have been obvious to one of ordinary skill in the art at the time the invention was made in light of Scame ("Scame's Encyclopedia of Card Games," by John Scame, 1973, HarperCollins, Pages 9 and 10 discussing wild cards in poker and Page 282 discussing dealing one card face up to each player and the dealer, entered as NPL 08-27-2007). Poker and blackjack are both analogous to Dice Game in that the player is attempting to obtain a winning combination of indicia.



Wheel of Fortune, the primary game of the '573 secondary reference, also teaches allowing players to buy a vowel (an initial display of certain indicia in a target combination), which is analogous (<http://web.archive.org/web/20040812155927/http://www.wheeloffortuneinfo.com/index.html>), entered as NPL 08-27-2007). The advantage of this combination would be to give the players a better chance at obtaining the winning combination of indicia, namely the correct price of the car in the Dice Game. This would serve to mitigate caused by the rule of the game being lost by one incorrect guess (Page 1, dice game).

### ***Claim Rejections - 35 USC § 101***

19. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. Claims 8 to 14, 25, 26, and 47 to 50 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. As required by page 10 of the recent *Bilski* decision (Court of Appeals for the Federal Circuit, 2007-1130), all claims must be either tied to a particular apparatus or to a physical transformation of matter from one composition to another. Physical transformations are seldom encountered in the gaming arts. One way to tie independent Claims 8, 25, and 47 to a particular apparatus would be to cite how the particular structures of the apparatus carry out the respective steps of the method. Quoting from *ex parte Cornea-Hasegan* (89 USPQ2d 1557) at 1559 & 1560: "The *Bilski* court, following Supreme Court precedent, 1 enunciates the machine-or-transformation test as follows: "A claimed process is surely

patent-eligible under §101 if: (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing.” *Id.* at 954; *see also In re Comiskey*, 499 F.3d 1365, 1377 [84 USPQ2d 1670] (Fed. Cir. 2007) (discussing the same test from *Diehr*, 450 U.S. 175 [209 USPQ 1]). ¶ Process claims directed to fundamental principles — including laws of nature, natural phenomena, and abstract ideas — mental processes, or mathematical algorithms are unpatentable. *Bilski*, at 951-52. A process claim that is tied to a specific machine may be patentable under §101. *Id.* at 961; *Comiskey*, 499 F.3d at 1377. ¶ While the *Bilski* court declined to elaborate on the “machine” branch of the test, it did provide some guidance on the issue. The court explains that “the use of a specific machine or transformation of an article must impose meaningful limits on the claim’s scope to impart patent-eligibility” and “the involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity.” *Bilski*, at 961-62 (internal citations omitted). As *Comiskey* recognized, “the mere use of the machine to collect data necessary for application of the mental process may not make the claim patentable subject matter.” *Comiskey*, 499 F.3d at 1380 (citing *In re Grams*, 888 F.2d 835, 839-40 [12 USPQ2d 1824] (Fed. Cir. 1989)). ¶ Nominal recitations of structure in a method claim do not convert an otherwise ineligible claim into an eligible one. *Bilski*, at 957. *See also Benson*, 409 U.S. at 68-69 (comparing *O’Reilly v. Morse*, 56 U.S. (15 How.) 62 (1854), to *The Telephone Cases*, 126 U.S. 1 (1888) – the Court explained that Morse’s eighth claim was disallowed because it failed to recite any machinery, however, Bell’s claim was patentable because it recited specified conditions for using a particular circuit); *In re Schrader*, 22 F.3d 290,

294 [30 USPQ2d 1455] (Fed. Cir. 1994) (holding a simple recodation step in the middle of the claimed process incapable of imparting patent-eligibility under §101); *In re Grams*, 888 F.2d at 839-40 (holding a pre-solution step of gathering data incapable of imparting patent-eligibility under §101)."

2. Quoting from *ex parte Halligan* (89 USPQ2d 1355) at 1364 & 1365: "Process claims 122 and 123 recite a series of process steps that are not tied in any manner to a machine. In other words, these claims do not limit the process steps to any specific machine or apparatus. Thus, the claims fail the first prong of the machine-or-transformation test because they are not tied to a particular machine or apparatus. The steps of process claims 122 and 123 also fail the second prong of the machine-or-transformation test because the data does not represent physical and tangible objects. Rather, the data represents information about a trade secret, which is an intangible asset. Thus, the process of claims 122 and 123 fails the machine-or-transformation test and is not patent-eligible under 35 U.S.C. §101. Process claims 119 and 120 recite "a programmed computer method" in which each of the process steps is performed by the programmed computer. The issue presented by these claims is whether recitation of a programmed computer suffices to tie the process claims to a particular machine. This is the exact issue that the court in *Bilski* declined to decide. *Bilski* at \*11. The court did, however, provide some guidance when it explained that the use of a specific machine must impose meaningful limits on the claim's scope to impart patent-eligibility. *Id.* Claims 119 and 120 recite a method performed on a programmed computer. This recitation fails to impose any meaningful limits on the claim's scope as it adds nothing

more than a general purpose computer that has been programmed in an unspecified manner to implement the functional steps recited in the claims. Were the recitation of a "programmed computer" in combination with purely functional recitations of method steps, where the functions are implemented using an unspecified algorithm, sufficient to transform otherwise unpatentable method steps into a patent eligible process, this would exalt form over substance and would allow pre-emption of the fundamental principle present in the non-machine implemented method by the addition of the mere recitation of a "programmed computer." Such a field-of-use limitation is insufficient to render an otherwise ineligible process claim patent eligible. *Bilski*, slip. op. at 15, citing *Diehr*, 450 U.S. at 191-92 (noting that eligibility under §101 "cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.").

3. Citing similar structures to those presently cited in Claims 1, 20, 27, and 28 would most likely comply with *Bilski*. While the claims are cited as gaming devices, most of the structure is defined by functions which could be steps of a gaming method. Citing how the specific structures of the apparatus perform corresponding specific method steps can serve to tie the method to a particular apparatus. Incorporating these structures from the specification into Claims 8, 25, and 47 and showing how these structures serve to perform the respective steps of the method would serve to tie the method claim to a particular apparatus. These are only suggestions. The examiner notes that the test for a concrete, tangible, and useful result is no longer used, but a concrete or tangible action or method step taken by an apparatus structure can serve to tie the claim to a particular apparatus. Exact suggestions are hard to provide, as the

examiner is unsure how the applicant will want to amend the claims in light of Bilski. For typical claims pertaining to a gaming device, the examiner will provide suggestions as accepting a wager from a player via a bill/coin slot or credit/debit card reader on a gaming machine; accepting input from a player via an input device on the gaming machine, such as a slot handle, touchscreen, keyboard, mouse, buttons, joystick, or trackball; manipulating the input data in physical memory by the gaming machine's processor according to the rules of the game stored in memory; displaying the output or game result to the player via an output device on the gaming machine such as a display; and remitting to the player any winning outcome via a bill/coin hopper or credit/debit card writer on the gaming device. Such limitations serve to tie the claim to a particular apparatus by showing how the respective structures of the apparatus carry out the respective steps of the method. The structural limitations must be meaningful to the claim as a whole and not trivial, as outlined above.

***Allowable Subject Matter***

20. Claims 5 to 7, 12 to 14, 29 to 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Increasing the modifiers based on the prediction symbol matching the component symbol is not possible in regard to the Dice Game reference as the player is trying to guess the fixed price of the car. It would not be possible to increase the price of the car once the game has commenced in a game like Dice Game.

***Response to Arguments***

21. Applicant's arguments filed 01-12-2009 have been fully considered but they are not persuasive. The examiner interpreted the claims as broadly as reasonable in light of the specification without incorporating limitations from the specification into the claims. The device created by the 103 combination of "Dice Game" and '573 (simply applying a TV game to a wagering device) has a processor operable to select one of the component symbols (with player input) (component symbol being one of the digits in the price of the vehicle, player selects first digit, Page 1 of Dice Game). Dice Game designates one of the plurality of prediction symbols (six prediction symbols or sides on a die; die rolled, Page 1 of Dice Game). The rolled die (prediction symbol) is displayed to the player (Page 1 of Dice Game). The modifier (1000s digit, essentially a X1000 multiplier) is modified based on the prediction symbol (matching digit is displayed or notified to player before moving on to the next digit, Page 1 of Dice Game). A second modifier is changed if the prediction symbol matches the component symbol (player moves on to next digit in the event of a match, Page 1 of Dice Game). If the prediction symbol does not match the selected component symbol, two symbol sets are formed (ranges of digits above and below displayed die face, player must guess which range that digit of the car's price falls into, Page 1 of Dice Game); the player is enabled to input a prediction of which symbol set includes the selected component symbol, the selected component symbol is revealed to the player (Page 1 of Dice Game), and a

third modifier is changed if the player correctly picks which symbol set includes the selected component symbol (moves on to next digit if correct range guessed, Page 1 of Dice Game). The steps are repeated until each of the component symbols is revealed (player guesses digits from left to right until all are guessed, one incorrect guess and the game is over, Page 1 of Dice Game). The player is provided an award based on all of the modifiers (sum of weighted digits in cars price or sum of modified multipliers, 1000s place or X1000 plus 100s place or X100 plus 10s place or X10 plus 1s place or X1). Either the second modifier or the third modifier can be the next digit. The next digit or second modifier is moved on to if the player guess the digit exactly; the next digit or third modifier is moved on to if the player guessed the digit incorrectly but correctly guessed its range relative to the rolled die.

22. A review of the applicants' arguments and specification leads the examiner to believe that the applicants intend for the first, second, and third modifiers to be tied to separate respective types of game actions taken by the player. This is especially evident in light of Figs. 4A-E (Paras. 81 to 86 of the specification published as 2005/0054411 A1). The embodiment of Figs. 4A-E was restricted out on 08-27-2007 as Group III, the applicants had elected presently examined Group II. Group III includes a match modifier, a prediction number modifier, and a correct prediction modifier, which are tied to different types of actions in the game. The applicants appear to intend for the first, second, and third modifiers of the elected group set to read on these respective functions. The examiner disagrees. For one, Group II does not use the terms match modifier, prediction number modifier, or correct prediction modifier; Group III also does

not claim the higher or lower number ranges of Group II that the player can select from in the event the player does not select the correct number initially. Also, a reading of Group II's supporting specification, Figs. 3A-G and Paras. 65 to 80, or a reading of Group II's claim language does not particularly tie the modifiers to a particular type of game action, as Group III's claim language and supporting specification clearly do. The examiner was reading Group II's claim language as broadly as reasonable without incorporating Group II's specification's limitations into the claims. The examiner thus believes reading Group II's claim language to tie the modifiers to the weighted decimal places or multipliers (1000s, 100s, 10s, and 1) as opposed to specific types of game actions taken by the player to be reasonably broad. Since the first, second, and third modifiers of Groups II's specification pertain to the player's guess of the first (Para. 68), second (Para. 74), and fourth (Para. 78) subsequent digits, respectively, the examiner believed that his application of Dice Game to apply to first, second, third, and fourth modifiers (respective multipliers being 1000s, 100s, 10s, and 1s respectively in a player guessing each digit in the price of an automobile), was as broad as reasonable, reading the claims in light of the specification without reading the limitations of the specification into the claims, and making every effort not to use impermissible hindsight. While the independent Claims are rejected as a 103, this is because a gaming device must be cited for Bilski purposes. If the claims were merely cited as purely a game method, the examiner would be able to apply Dice Game as a 102 reference, as evidenced by the rejections above, in which all the game steps were anticipated by Dice Game, and the hardware structure was anticipated by '573. In any event, the examiner does not



believe that Group II's specification positively ties the first, second, or third modifiers either to respective decimal places (as the Dice Game reference does) or to respective first, second, and third types of game actions (as Group III's claims and specification do), as the examiner believes the specification could be read in either way in this regard. The examiner sees the applicants' point of view in this regard, but does not find their interpretation of the claim language and the references convincing enough to warrant withdrawal of the Dice Game reference. The examiner has already indicated allowable subject matter regarding the dependent claims which involve increasing the modifiers; increasing the car's price in the Dice Game reference once game play has begun would be fraudulent and result in an inoperable game. The other way to obtain allowable subject matter would be to write the independent claims to more clearly pertain to respective modifiers to respective game functions as Group III's claims and specification clearly do; the examiner does not have any suggestions for this as he believes Group II's specification could reasonably be read to tie the modifiers to the individual digits or component symbols or to the specific type of game actions taken by the player. The rejections in light of the '369 and '837 references are withdrawn as the claims as presently amended do not read on these references. This action is non-final as Bilski has come out since the last action, and claim 25 is not presently amended; a 101 3rejection is thus not necessitated by amendment. A 101 rejection on Claim 25 was not required because at the time of the last action it had a concrete, tangible, and useful result. The examiner respectfully disagrees with the applicants as to the claims' condition for allowance.

***Citation of Pertinent Prior Art***

23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nevada Gaming Regulation 14.025, downloaded from [http://www.gaming.nv.gov/stats\\_regs/all\\_regs.pdf](http://www.gaming.nv.gov/stats_regs/all_regs.pdf), on 04-30-2009 is considered relevant as it pertains to themes of games such as Dice Game (from "The Price is Right") or "Wheel of Fortune" that may be incorporated into wagering games.

***Conclusion***

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Hoel whose telephone number is (571) 272-5961. The examiner can normally be reached on Mon. to Fri., 8:00 A.M. to 4:30 P.M.

25. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3714

26. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Matthew D. Hoel  
Patent Examiner  
AU 3714

Peter Vo  
Supervisory Patent Examiner  
Art Unit 3714

/M. D. H./  
Examiner, Art Unit 3714

/Peter D. Vo/  
Supervisory Patent Examiner, Art Unit 3714